

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WOTC
	CORRESPONDENCE SYMBOL OWI
	DATE June 23, 2023

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 22-22

TO: STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARDS AND CHAIRS
AMERICAN JOB CENTERS
WORK OPPORTUNITY TAX CREDIT STATE COORDINATORS

FROM: BRENT PARTON /s/
Acting Assistant Secretary

SUBJECT: Work Opportunity Tax Credit (WOTC) Information Collection Revised Forms

1. **Purpose.** This Training and Employment Guidance Letter (TEGL) informs State Workforce Agencies (SWA), partnering agencies, employers, and other stakeholders of the Office of Management and Budget (OMB) approval of the extension, with revisions, of the Work Opportunity Tax Credit (WOTC) information collection under OMB Control number 1205-0371. Additionally, this TEGL provides clarification on the use of ETA Form 9198, *Employer Representative Declaration Form*, for employers to authorize a third-party representative to act on their behalf to manage WOTC certification requests.

2. **Summary and Background.**

- a. Summary – The WOTC information collection consists of administrative, processing and reporting forms which are used by program participants. In accordance with Paperwork Reduction Act (PRA) requirements, the Employment and Training Administration (ETA) published a Request for Comment Notice in the *Federal Register* for the proposed extension with revisions of the WOTC information collection, before submitting the package to OMB for approval. ETA received a total of 83 comments during the 60-day public comment period, which were taken into consideration for the revisions made to ETA Forms 9058, 9061, 9062, 9063, 9065, 9175 and 9198. The OMB approval of this information collection is effective through May 31, 2026. All reporting and processing forms are available on ETA’s website at: <https://www.dol.gov/agencies/eta/wotc>.
- b. Background – The WOTC is a Federal tax credit available to employers for hiring from certain categories of workers (targeted groups) who have consistently faced significant barriers to employment. The WOTC is set forth under section 51 of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 51), and is effective until

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

December 31, 2025, under the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), Division EE, Title I, Subtitle B, Section 113. The U.S. Departments of Labor and Treasury jointly administer the WOTC. Treasury, through the Internal Revenue Service (IRS), administers all tax-related provisions and requirements of the tax credit. Labor, through ETA, oversees the administration of the WOTC certification process, including the allotment of grant funding to SWAs, developing procedural guidance, and providing technical assistance and training to WOTC stakeholders.

3. **Action Requested.** SWAs, participating agencies, and employers and their representatives are encouraged to start using the OMB-approved versions of the revised ETA forms as soon as possible, effective May 31, 2023. The forms are available on the ETA WOTC website at <https://www.dol.gov/agencies/eta/wotc>. ETA requests that SWAs make available the OMB-approved forms on their respective WOTC websites/portals, and distribute this information with related program staff, employers and their representatives, participating agencies, and other interested partners. SWAs must make the revised ETA forms used to submit WOTC certification requests available to employers and other participants by October 1, 2023. Additional information on this transition period is detailed below in section 4e of this TEGL.

4. **Details.**

- a. SWAs, partner agencies, employers and their representatives, and job seekers should continue to use the following WOTC processing, administrative, and reporting forms, which have not changed in description of purpose:

WOTC Processing Forms. Employers and jobseekers complete the WOTC processing forms and submit them to the appropriate SWA for processing. SWAs complete a three-step application review process which includes forms intake, verification, and notifications.

[ETA Form 9061](#), *Individual Characteristics Form (ICF)*.

Note: The [Spanish - ETA Form 9061](#) is available for translation purposes, only.

[ETA Form 9062](#), *Conditional Certification (CC)*.

[ETA Form 9175](#), *Self-Attestation Form (SAF) for Qualified Long-Term Unemployment Recipient (LTUR)*.

WOTC Reporting Forms. Reporting forms are used quarterly by ETA grantees (SWAs). SWAs must report fiscal expenditures using ETA Form 9130 and program activities using ETA Form 9058. Note: ETA Form 9130, used for financial reporting, is covered under a separate OMB Control No.

[ETA Form 9058](#) – *WOTC Report 1, Certification Workload and Characteristics of Certified Individuals*.

WOTC Administrative Forms. WOTC administrative forms are used by SWAs and employers (or their authorized representatives, if applicable) for recordkeeping purposes.

ETA Form 9063, *Employer Certification*. (This form is not available online).
[ETA Form 9065](#), *Agency Declaration of Verification Results (ADVR) Worksheet*.
[ETA Form 9198](#), *Employer Representative Declaration Form*.

Note: ETA Form 9198 is a new form approved under this information collection request and was not under the prior OMB approval through March 31, 2023.

- b. **OMB Approval of Several New WOTC Forms.** ETA Forms 9061, 9062, 9063, 9065, 9175 and 9058, which had previously been approved by OMB for use through March 31, 2023, are now approved for use under the PRA of 1995, under OMB Control No. 1205-0371, for an additional three-year period through May 31, 2026. ETA Form 9198 is also approved by OMB for use through May 31, 2026.

The U.S. Department of Labor notes that a Federal agency may not conduct or sponsor a collection of information, nor is the public required to respond to a collection of information, unless it is approved by OMB under the PRA and displays a currently valid OMB control number (44 U.S.C. § 3507). Also, notwithstanding any other provision of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. § 3512).

- c. **Revised Forms and Instructions.** Program participants (employers, job seekers, SWAs and partner agencies) should use the newly approved ETA Forms to submit and process WOTC certification requests effective May 31, 2023. If employers submit expired ETA forms (March 31, 2023 expiration date) after June 1, 2023, SWAs should accept and process those forms in adherence to TEGL 16-20, *Work Opportunity Tax Credit (WOTC) Procedural Guidance*, or the applicable ETA Advisory in effect at the time of certification request review.

The WOTC processing, reporting and administrative forms have been updated to reflect general grammatical, syntax, and/or formatting revisions. The corresponding form instructions were also updated to remove outdated policy guidance, statutes, or expired provisions of the tax credit. Many of the form adjustments were minimal and non-substantive in nature, reformatted in a user-friendly style. Examples given, ETA received numerous requests to update the “date-of-birth” format (mm/dd/yyyy) and include the applicant’s full social security number across all required WOTC forms. ETA also considered and incorporated substantive changes to the ICR in response to public comments received during the 60-day public comment period. Specific form revisions are as follows:

ETA Form 9061

Revised form 9061 includes a formatting/design update which more clearly separates the sections for different targeted groups and simplifies the eligibility statements/

questions for the job applicant/employer to complete. A field was added to provide space for multiple states in response to questions pertaining to where public welfare benefits were received. This addition will help states easily identify when certification requests need to be verified by other SWAs and/or participating agencies.

ETA Form 9062

Revised Form 9062 includes minor formatting updates to make a better distinction between the respondent (employer versus job applicant) sections.

ETA Form 9175

Revised Form 9175 includes minor formatting updates to clearly identify that the job applicant (not the employer) is self-attesting to their period(s) of unemployment.

ETA Form 9063

Revised Form 9063 includes minor stylistic updates, including slight syntax edits to clearly identify the information being collected for the employer and employee.

ETA Form 9058

Revised Form 9058 includes updates to the reporting fields completed by the SWA. For program activity, the revised form will capture the number of “out-of-state” certification requests received by the SWA; reasons for denials issued by the SWA; and updated hourly wage brackets to track overall impact across higher income levels. Revised instructions reflect the new added fields for SWA input and output workload activities. SWAs will use the revised form for fiscal year 2024 reporting.

ETA Form 9065

Revised Form 9065 includes stylistic/formatting updates which more clearly identify the type of information being requested of the SWA. The form instructions include details on how SWAs should complete any necessary follow-up activities, such as notices of invalidations for invalid certifications issues, as a result of quarterly audits, per TEGL 16-20 guidance.

ETA Form 9198

ETA Form 9198 replaces the use of IRS Form 2848, *Power of Attorney and Declaration of Representative*, for employers to authorize an individual to represent them for WOTC purposes. ETA will provide additional technical assistance to SWAs on form instructions.

IRS Form 8850

IRS Form 8850, *Pre-Screening Notice and Certification Request for the WOTC*, and its Instructions are available online at <https://www.irs.gov/forms-pubs/about-form-8850>. IRS Form 8850 has been authorized by OMB for use through June 30, 2025. Note: IRS Form 8850 is under OMB Control No. 1545-1500 and not a part of ETA’s WOTC information collection. Employers and their representatives are encouraged

to visit the IRS website (<https://www.irs.gov/forms-pubs/about-form-8850>) for additional information.

- d. **General Instructions**. Although electronic and facsimile submission of WOTC Forms is permitted, not all states are equipped to accept an electronic or faxed copy of documents. Employers should confirm acceptable submission methods with the SWA prior to form submission. Forms with an electronic (e-)signature image or digitized image of a handwritten signature may only be used if the employer's system satisfies the requirements in IRS Ann. 2002-44, 2002-1 C.B. 809. Guidance on acceptable electronic (e-)signature methods is provided in IRS Notice 2012-13, 2012-9 I.R.B. 421, available at <https://www.irs.gov/pub/irs-drop/n-12-13.pdf>.
- e. **Transition Period for State Workforce Agencies and Employers**. To ensure the smooth and uninterrupted submission of employers' certification requests for their new hires, ETA is granting a transition period that allows employers to continue to submit applications using the "old" ETA Forms 9061/9062/9175 (expiration date March 31, 2023), for a temporary period. SWAs, participating agencies, employers, and their representatives are encouraged to start using the recently OMB-approved versions of the revised ETA forms as soon as possible, including ETA Form 9198. Use of the revised ETA forms (OMB expiration date May 31, 2026) will be required to submit certification requests to SWAs for new hires effective October 1, 2023. After that date, employers should not submit older (expired) versions of ETA Forms 9061, 9062, and/or 9175. During the transition period, SWAs must permit employers to continue to use either the old March 2023 or the revised May 2026 versions of ETA Forms 9061, 9062 and 9175. Additionally, SWAs should work to update their internal WOTC management systems, including employer authorized representative management systems, to reflect changes to the revised ETA Forms and make these forms available to employers, participating agencies, and other stakeholders by the end of the 90-day transition period.
- f. **Guidance for Use of, and Transition Period for, ETA Form 9198**. Under TEGL 16-20, *Work Opportunity Tax Credit (WOTC) Procedural Guidance* (available at <https://www.dol.gov/agencies/eta/advisories/training-and-employment-guidance-letter-no-16-20>), employers may authorize an individual to represent them for WOTC purposes by submitting an IRS Form 2848, *Power of Attorney and Declaration of Representative*, to the SWA in which the employer's business is located. ETA recognized the concerns raised by SWAs and employers and their representatives regarding IRS Form 2848 instructions and its applicability to WOTC, and through this information collection request, ETA developed Form 9198, *Employer Representative Declaration Form*, for employers to authorize a representative(s) to facilitate the WOTC certification request process on their behalf. ETA Form 9198 will replace the use of IRS Form 2848 for employers to authorize representation under WOTC, effective June 1, 2024. The current expiration date of IRS Form 2848 is May 31, 2024 (OMB Control No. 1545-0150).

ETA recognizes that employers may have current authorizations (IRS Form 2848) on file with the SWA that have an effective years or period end date that extends beyond May 31, 2024. However, in an effort to transition from the use of IRS Form 2848 to ETA Form 9198 for employer representative declarations, ETA will update WOTC procedural guidance (TEGL 16-20) to advise employers that effective June 1, 2024, use of IRS Form 2848 to authorize employer representatives under WOTC will be discontinued. As a result, all IRS Form 2848 authorizations will automatically terminate on June 1, 2024, regardless of the ‘Years or Periods’ end date indicated in section 3 of the Form. SWAs may continue to recognize the effective period end date listed, if the date falls on or before May 31, 2024. SWAs should update their employer representative management systems and/or processes to terminate all IRS Form 2848 employer authorizations, effective June 1, 2024. Effective this date, employers must use ETA Form 9198 to (re)authorize employer representatives.

Employers may use, and SWAs may accept ETA Form 9198, effective immediately. SWAs should begin to update their internal controls and processes to manage employer representative authorizations using ETA Form 9198, and work with employers and other stakeholders to assist in transition from use of IRS Form 2848 to ETA Form 9198 effective the publication date of this TEGL.

ETA Form 9198 does not constitute a formal power of attorney arrangement between the employer and its representative, but it will allow the representative to conduct authorized WOTC activities as listed in the ‘Authorized Representatives’ section of TEGL 16-20. In general, formal power of attorney designations should not be required for employer representatives to conduct WOTC business with the SWAs, and ETA discourages SWAs from imposing additional requirements for documenting employer representative declarations beyond the requirements listed in ETA's procedural guidance. As such, ETA will issue updated procedural guidance for the WOTC certification process, including how SWAs will manage employer representative declarations using ETA Form 9198, in TEGL 16-20, Change 1.

ETA Form 9198 provides information to employers on how to authorize an individual(s) to represent them during the WOTC certification process, including how an employer may authorize multiple representatives, according to ETA Form 9198 Instructions and WOTC recordkeeping requirements listed in TEGL 16-20. There are specific instructions for SWAs to note for the use of ETA Form 9198, as follows:

Line 1. Employer Information. The employer identification number (EIN) listed on Form 9198 must be a tax-identification number that is registered in the state where the employer’s business is located and WOTC certification requests are submitted. Employers should verify with the SWA that the appropriate EIN is provided consistently across IRS Form 8850 and ETA Forms 9198 and/or 9061, as applicable.

Line 2. Representative(s). SWAs are required to send notices and communications to a minimum of two (2) Employer Representatives with the same organization, as designated in Line 2. SWAs may choose to allow employers to list additional

representatives as an appendix to Form 9198. See Form Instructions, page 4 for additional details.

Line 3. Acts Authorized. Representative(s) shall have the authority to perform the activities described on pages 1-2 of Form 9198 with respect to the WOTC certification process. These activities include the authority to complete and sign IRS Form 8850 and related ETA Forms on behalf of the employer, and substitute or add representative(s) within the same company under a valid authorization form.

Line 3. Acts Authorized. The Authorization period listed cannot exceed five (5) years and will automatically terminate on the applicable end date, unless revoked or withdrawn earlier by either party. The designation of Year(s) or Period(s) cannot be retroactive from the signature date of the employer declaration. Employers may not specify years or periods that have ended, as of the effective date of the authorization. Note: the date the Employer signs the declaration form (Line 5) is the effective date of the authorization.

Line 4. Retention/Revocation of Prior Authorization. The filing of an Employer Representative Declaration Form will not automatically revoke prior authorizations on file with the SWA for the same matters and years or periods covered by the form. Employers must check the applicable box on page 2 and attach a copy of any (prior) authorization(s) to be revoked if the employer wants to revoke prior authorizations.

5. **Inquiries.** Please direct inquiries to the appropriate Regional WOTC Coordinator listed on the WOTC website at <https://www.dol.gov/agencies/eta/wotc/contact/regional-offices>.
6. **References.**
 - Section 51 of the Internal Revenue Code of 1986, as amended (<https://uscode.house.gov/view.xhtml?path=/prelim@title26/subtitleA/chapter1/subchapterA/part4/subpartF&edition=prelim>);
 - Pub. L. 116-260, Consolidated Appropriations Act of 2021 (<https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>);
 - Pub. L. 104-13, Paperwork Reduction Act of 1995 (<https://www.congress.gov/104/plaws/publ13/PLAW-104publ13.pdf>);
 - *Federal Register* Notice [87 FR 69048](#): Agency Information Collection Activities; Comment Request; Work Opportunity Tax Credit (November 17, 2022) (<https://www.federalregister.gov/documents/2022/11/17/2022-25037/agency-information-collection-activities-comment-request-work-opportunity-tax-credit>); and
 - Training and Employment Guidance Letter No. 16-20, *Work Opportunity Tax Credit (WOTC) Procedural Guidance* (<https://www.dol.gov/agencies/eta/advisories/training-and-employment-guidance-letter-no-16-20>).
7. **Attachment(s).**
 - Attachment I: [ETA Form 9061](#), *Individual Characteristics Form (ICF)*
 - Attachment II: [ETA Form 9062](#), *Conditional Certification (CC)*
 - Attachment III: [ETA Form 9175](#), *Self-Attestation Form (SAF) for Qualified Long-Term Unemployment Recipient (LTUR)*

- Attachment IV: [ETA Form 9198](#), *Employer Representative Declaration Form*
- Attachment V: [ETA Form 9065](#), *Agency Declaration of Verification Results (ADVR) Worksheet*
- Attachment VI: [ETA Form 9058](#), *WOTC Report 1, Certification Workload and Characteristics of Certified Individuals*